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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,069	09/21/2001	Wendell D. Willingham	17666 USA	4390

7590

04/22/2004

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT	PAPER NUMBER
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DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,069

Applicant(s)

WILLINGHAM ET AL.

Examiner

Nathan J. Newhouse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification, as originally filed, does not provide support for the now added limitation that the barrier disc spans the "entirety of the width of the rim of the container". Applicant relies upon figure 3 for support for this added limitation, but there is insufficient support in this figure for that limitation. Clearly figure 3 shows that the disc does not span the "entirety of the width of the rim of the container" as the disc does not span to the outer edge of the container rim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4-6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Druitt (US 5, 638,972) in view of Baranowski et al. (US 6,677,397) and Dudzik (GB 2,235,186).

~~Druitt teaches a closure having a skirt with helically extending continuous or~~
interrupted thread and an annular sealing fin 6 that engages both the rim and the side of the container finish as the sealing fin is folded upon applying the closure to the container. Druitt does not teach the barrier disc being inserted on the inwardly facing side of the top panel of the closure, the barrier disc spanning the width of the rim of the container.

Baranowski et al. teaches a threaded closure having a barrier disc adhered to the inner surface of the closure. The method of providing the liner includes forming the composition of the liner material to be a good oxygen barrier, molding the liner into a disc and then adhering the disc to the under side of the closure. The disc spans the entire width of the closure. Dudzik teaches a similar linerless sealing closure for pressurized containers wherein the inwardly facing surface of the top panel of the closure can have a disc shaped barrier sheet 25 to reduce the diffusion of gas that spans the undersurface of the closure interior of the sealing tongue 26. See embodiment of figure 2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a barrier disc as taught by Baranowski et al. to the closure of Druitt to provide an oxygen barrier that spans on the undersurface of the closure of Druitt interior of the sealing rib 6 as taught by Dudzik. The barrier disc would span at least across the width of the bottle opening and a part of the rim. See

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figures 6 and 7 of Druitt as the disc taught by Baranowski et al. would be inserted up to sealing rib 6.

5. Claims 2-3 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Druitt (US 5,638,972) in view of Dudzik (GB 2,235,186) as applied to claims 1 and 6 above, and further in view of Product Data Sheet of Daraform Exp. 5162-65EG.

Druitt, as modified above, teaches everything except for the barrier disc having an oxygen scavenging material and made the barrier disc with a primary ingredient of EVOH or LCP.

The Darex Container Products' Product Data Sheet of Daraform Exp 5162-65EG teaches that it is well known to utilize an oxygen scavenging material in combination with a barrier liner that is used for closing beverages in the closure art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the barrier disc of Druitt out of an oxygen scavenging material and the main ingredient of the barrier disc being EVOH or LCP to prevent diffusion while absorbing oxygen already within the container.

6. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Druitt (US 5,638,972) in view of Dudzik (GB 2,235,186) as applied to claims 1 and 6 above, and further in view of Richmond (US 6,095,359).

Druitt, as modified above, teaches everything except for the barrier disc having a primary ingredient of EVOH or LCP.

Richmond teaches that it is well known in the closure art to utilize a barrier material 13 made of EVOH. Therefore it would have been obvious to one of ordinary

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skill in the art at the time the invention was made to utilize this material (EVOH) to make the barrier disc of Druitt.

7. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Druitt (US 5,638,972) in view of Dudzik (GB 2,235,186) and Richmond (US 6,095,359) as applied to claims 2 and 7 above, and further in view of Yamada et al. (US 5,143,763).

Druitt, as modified above, teaches everything except for the barrier disc having an oxygen scavenging material.

Yamada et al. teaches that it is well known to utilize an oxygen scavenging material in combination with a barrier liner that is used for closing beverages in the closure art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the barrier disc of Druitt out of an oxygen scavenging material to prevent diffusion while absorbing oxygen already within the container.

Response to Arguments

8. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan J. Newhouse
Primary Examiner
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